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HIGH COURT OF SIKKIM
Gangtok

No. 36/HCS

Dated: 01.10.2005

NOTIFICATION
THE FAMILY COURTS (COURT) RULES, 2005

In supersession of the Family Courts (Court) Rules 1993 made under section 21 of the Family Courts Act, 1984 by the High Court of Sikkim and in exercise of the powers conferred on the High Court under Section 21 of the Family Courts Act 1984, and all enabling provisions in that behalf, the High Court of Sikkim, prescribes the following rules to regulate the proceedings of the Family Courts in the State of Sikkim.

Short title, Commencement and Applications:

1. (a) **Short Title:-** These rules may be called the "High Court of Sikkim Family Courts (Court) Rules,2005".

   (b) **Commencement:-** These rules shall come into force on the date of publication of the rules, in the Sikkim Government Gazette.

   (c) **Application:-** These Rules shall apply to the Family Courts established in the State of Sikkim under Section 3 of the Family Courts Act,1984.

2. **Definitions:** - In these rules, unless the context otherwise requires.

(a) 'Act' means the Family Courts Act, 1984;
(b) 'Center' means a counselling center;
(c) 'Counsellor' means a person referred to in section 6 of the Act.
(d) 'Court' means the Family Court established under section 3 of the Act;
(e) 'High Court' means the High Court of Sikkim;
(f) 'Institution' means any Institution or organization engaged in social welfare, registered and recognized by the Government or recognized by the High Court;
(g) 'Judge' means Judge of the Family Court;
(h) 'Petition' shall include an application under chapter IX of the Criminal Procedure code, 1973 unless the subject matter or context requires otherwise;
(i) 'Service' means Sikkim Superior Judicial Service;
(j) All other words and expressions used but not defined in these rules shall have meaning respectively assigned to them in the respective Acts mentioned in rule 5 (d) as well as in the code of Civil Procedure and Criminal Procedure code;

3. Working Hours: -

The working hours and sittings of the Family Courts shall be everyday from 10 A.M. to 4 P.M, except – on Sundays and holidays.

4. Place of Sitting: -

(a) The place or places where the Family Court shall sit. For East and North Sikkim shall be at Gangtok and for South and West Sikkim shall be at Namchi and in other places specified by the High Court from time to time by an order in this regard.

(b) The Judge can also hold sitting outside notified place in consultation with the parties to the proceedings after obtaining permission from the High Court.

(c) Notwithstanding anything contained above, if in any particular case the Judge is of the opinion that it will tend to the general convenience of the parties or the witnesses or for any other parties to hold its sittings at a place other than its ordinary place of its sittings but within its limits of territorial jurisdiction, the Judge may do so for reasons to be recorded in writing with prior notice to all the parties and to such other persons as the Judge may consider necessary. The Judge shall intimate the High Court about such sittings soon after a decision is taken in this behalf.

(d) The Judge may, for expedience, hold proceedings of the Court beyond the working hours as prescribed in rule 3 above.
Provided no such proceedings shall be held under this rule except with the consent of the parties to the proceedings.

(e) The Family Court shall hold its sitting in open or in camera as determined by it in each case, but shall hold the proceedings in camera if either party so desires.

(f) No act of the Family Court shall be invalid by reason of holding or continuing its sitting at any place of its choice or on any holiday or outside normal working hours, when such sitting is informed to the parties in advance.

(g) Normally the Family Court shall hold sitting in between 10.30 a.m. to 1.00 p.m. and 1.30 p.m. to 4.00 p.m.- on all days, and the office shall work in between 10.00 a.m. to 4.00 p.m., except on Sundays and holidays declared by the High Court.

5. Institution of Proceedings: -

(a) All proceedings instituted before a Family Court shall be by way of Petition as per form No. 1 appended to these Rules which should be duly verified by the petitioner. Interlocutory application in the proceeding in form No. 2 to be instituted or already instituted shall be filed after being duly verified by the applicant. The petitions can be in any language falling in Schedule VIII to the Constitution. A translated copy shall be affixed whenever it is sent to different states.

(b) There shall no court fees in respect of any petition or any Interlocutory Application filed before the Family Court.

(c) Whenever court fee is prescribed under the provisions of rules of other Acts mentioned in clause (d) it shall be paid.

(d) The application may be filed before Family Court as permitted under any law which also include provisions in the following laws viz.,

i. Chapter IX of the Criminal Procedure Code, 1973 (2 of 1974).

ii. Hindu Marriage Act,1955 (25 of 1955)

iii. Guardianship of the person or custody of or access to any minor under the Hindu Minority and Guardianship Act, 1956 (32 of 1956)

6. Filing of petition: -

A petition or any application shall be filed with two copies signed by the parties along with as many copies to be sent to all the respondents by the Peshkar of the Family Court. One copy of such petition or application shall be forwarded by the designated officer of the Family Court to the Counsellor forthwith.

7. Notice to Respondent: -

Notice of the proceeding including interlocutory application, shall be issued in Form No. 3 appended to these rules along with a copy of the petition or the application as the case may be. In respect of matter under Chapter IX of the Criminal Procedure Code the summons to appear and answer shall be in Form No. 4.

8. Name and address of the Party or of the representative to be stated in every process: -

The name and address of a party or of the representative appearing for a party shall be stated in every notice, summons, witness summons, interim application, warrant and every process of the Court issued at the instance of such party or representative.

9. Notice, summons etc. how attested and signed: -

All Notices, Summons, Rules, Orders, Warrants and other mandatory processes shall be sealed with the seal of the court and shall be signed by the Peshkar of the court.

10. Returnable date of notice summons: -

Unless otherwise ordered, the notice/summons shall be returnable in four weeks after the date of the filing of the petition, if the respondent resides within the local limits of the Court and six weeks after the date of the filing of the petition if the respondent resides outside the said limits.

11. Mode of Service of notice, summons: -

a) The notice/summons shall be served in the manner prescribed in the Code of Civil Procedure, save and except in proceedings under Chapter IX of the Criminal Procedure Code where the provisions of that Code will apply. Along with the notice/summons a copy of the petition and exhibits/ documents annexed thereto shall be sent.

b) In addition to the normal process of the service by the court, the applicant will be at liberty to serve upon the respondent the notices/summons of the court along with copy of the petition and exhibits/documents either through person or through other recognizable mode of service including registered post and shall file affidavit of service upon the respondent.

12. Proof of Service of Summons: -

It has to be shown by way of affidavit or application or other evidence that the notices/summons were served upon the respondent.

13. Substituted Service: -

In case of failure to serve summons/notice by normal process, the court, on an oral/written application of the applicant, may direct for serving summons/notice upon the respondents by substituted mode i.e., through affixture, publication in the newspaper, etc and the applicant shall file affidavit stating as to the mode adopted for service of summons.

14. Copy of petition to be furnished to the respondent: -

The applicant shall furnish a complete Copy with all exhibits to the respondents, who asks for a copy on the ground that he has not received the copy of the petition or that he has not received complete copy.

15. The provisions under Order 1 of the Civil Procedure Code for addition of a necessary party or a proper party, shall be applicable to a proceeding before the Family Court.

16. Appointment of Legal Aid and Amicus Curiae:

a) Proceedings before the family court shall be taken up in the presence of the parties, and a legal practitioner on either side shall be allowed to appear only as amicus curiae, if the court finds it necessary in the interest of justice.

b) ***(i) Appearance of Legal Practitioners or Advocates in the Family Court*** - Notwithstanding anything contained in law, for the time being in force, no party to a suit or proceeding before a family court shall be entitled as of right to be represented by the Legal Practitioner or Advocate. Provided that if the Family Court considers it necessary in the interest of justice, it may seek assistance of a legal expert as amicus curiae.

Explanation – It does not preclude the family court from granting permission in the exercise of its discretion, where the circumstances justify, to the party to be represented by Legal Practitioner or Advocate.

(ii) Party entitled to free legal advise - A party will be entitled to take legal advise at any stage of the proceeding before the court. A party in indigent circumstances will be entitled to free legal aid from the State Legal Services Authority in accordance with the Rules made there under by the State.

17. Directions on the returnable date: -

On the returnable date of the notice/ summons, the petition shall be placed for directions before the Judge of the Family Court. On that day, the designated Counsellor shall attend the court of the Judge giving directions. The Judge shall, in consultation with the Counsellor, direct the parties to attend before a specified Counsellor appointed for the purpose of counselling. The Judge shall fix a specified date by which the Counsellor shall file a memorandum setting out the outcome of the proceeding before him. On that day the court will pass further orders and directions, as it deems fit and proper.

18. Role of the Counsellor: -

The Counsellor appointed to counsel the parties shall fix time and date of appointment. The Parties shall be bound to appear before the Counsellor on the date and at the time so fixed.

If either of the parties fail to appear before the Counsellor on the date and time so fixed, the counsellor may fix another date and shall communicate the same to the absentee party by notice, issued through registered post. In case of default by either of the parties on the adjourned date, the counsellor shall submit a report to the court and on receipt of such report, the court may proceed with the matter without prejudice to other powers of the Court to take action against the defaulting parties.

The Counsellor entrusted with any petition, on appearance of the parties before him/her, shall assist and advice the parties regarding the settlement of the subject matter of dispute and shall endeavour to help the parties in arriving at a conciliation.

The Counsellor may, in discharge of her/his duties visit the home of either of the parties and interview the relatives and family members living with the parties or either of the parties.

The Counsellor in discharge of her/his duties may also seek such information as she/he deems fit from the employer of either of the parties and such requisition for information shall be made through the court.

The Counsellor may take the assistance of any organization, institution or agency in the discharge of her/ his duties.

The Counsellor shall submit a report to the court as and when called for, to assist the court in deciding the case in hand. The report may, inter alia, contain the following points;

a) Living environment of the parties concerned

b) Personalities

c) Relationship

d) Income and standard of living

e) Educational status of the parties

f) Status in society

g) Counsellor's findings

The counsellor may also supervise the child/children if and when called upon by the court.

19. Duties and Functions of a Counsellor: -

(1) The Counsellor shall perform such work and duties as may be entrusted by the Family Court

2) Counsellor entrusted with any petition shall assist and advise the parties regarding the settlement of the subject matter of dispute between the parties or any party thereof. The Counsellor shall also help the parties in arriving at a reconciliation.

(3) The Counsellor in the discharge of his duties shall be entitled to visit the homes of any of the parties.

4) The Counsellor in the discharge of his duties shall be entitled to interview relatives, friends and acquaintances of parties or any of them.

(5) The Counsellor in the discharge of his duties may seek such information as he may deem fit from employer of any of the parties.

(6) The Counsellor may in discharge of his/her duties refer the parties to an expert in any other area such as psychiatry, but shall refer the parties to such expert only after taking permission from the concerned Court and after obtaining consent from both the parties.

(7) The Counsellor shall make an endeavour to uphold the family institution and avoid disruption. He shall conduct proceedings before sunset and make visits only before sunset. The wishes of the children shall be given paramount consideration for reconciliation. He/She shall use persuasive methods and shall not use misrepresentation or false promise or threats.

20. Confidentiality of information: -

The information gathered by the Counsellor, any statement made before the Counsellor and any notes or report prepared by the Counsellor shall be treated as confidential. Counsellor shall not be called upon to disclose the information, statement, notes or report to any Court, expect with the consent of both the parties and to the extent mentioned in Rule 25.

Such notes or report or statement or any material, lying with the Counsellor shall be kept in sealed cover by the Counsellor and shall not form a part of evidence before the Court but form part of the records.

If the case is reported in the journals, the information can be used for research or education after obtaining permission from the High Court.

21. Counsellor's right to supervise custody of Children: -

The Counsellor shall be entitled to supervise the placement of children in the custody of party and shall be entitled to pay surprise visits to the home where the child resides. In the event of the Counsellor coming to a conclusion that any alternation is required in the arrangements relating to the custody of a child or children, the

Counsellor shall make a report to the court in that connection. Thereupon, the Court may, after giving notice to the parties to appear before it, pass such orders in that connection as it may deem fit.

Female children shall be entrusted to the female Counsellor. During supervise visits, and while conducting proceedings, it shall be the endeavour of the Counsellor to show utmost respect to the women and children and not intimidate them.

22. Counsellor not to give evidence: -

The Counsellor shall not be permitted to give evidence in any Court in respect of the information, statements, notes or report referred to in rule 23;

Provided that the Counsellor shall submit to the Court a report relating to the home environment of the parties concerned, their personalities and their relationship with the child or children in order to assist the Court in deciding the question of custody, guardianship of any child or children of the marriage;

Provided further that the Counsellor shall also submit to the court a report relating to home environment, income or standard of living of the party or parties concerned in order to assist the Court in determining the amount of maintenance or alimony to be granted to one of the parties.

23. Settlement before Counsellor: -

When the parties arrives at a settlement before the Counsellor relating to the dispute or any part thereof, such settlement shall be reduced to writing, read over and explained to the parties, their thumb mark or signatures as the case may be, shall be obtained and countersigned by the Counsellor. The settlement so arrived at shall be filed before the court promptly.

24. List of Institutions, Agenda etc.: -

1) The Family Court in consultation with the Counsellors shall prepare in the month of February of each year, a list of about three Institutions, Organisations or agencies working in the area of Family Welfare, Child Guidance, Employment or any other area that the Court may deem fit, in order to enable the Counsellor or parties to obtain the assistance of such institution, organization or agency and submit it to the High Court for approval. The list shall be valid till the approval of the next list by the High Court.

2) The Court may lay down the manner and the conditions for association of such Institutions, Organizations or Agencies. The association of such Social Welfare Agencies etc., may extend to their active participation in resurrecting family bond and its rehabilitation.

3) Such Institutions, Organisations or Agencies may also be entrusted with the duties of supervising, guiding and assisting the parties, even after the case is disposed of by the Court.

25. Efforts for arriving at settlement: -

Every Family Court shall maintain separate lists of:

a) Institutions and Organizations engaged in social welfare together with names and addresses of representatives of such Institutions or Organizations;

b) Persons professionally engaged in promoting the welfare of the family with their addresses;

c) Persons working in the field of social welfare with their addresses.

Report from Institution, Organization etc: - A Family Court may call for report as regards efforts made or to be made by the Institution, Organization or persons referred to in Section 5 of the Act;

Provided that where efforts for amicable settlement are continuing or are deferred, the Family Court may require the Institution, Organisation or person to submit before it an 'interim' report.

HEARING OF PETITIONS IN COURT

26. Adjournment by the Court: -

The date of hearing, so fixed shall not be adjourned by the court unless there are circumstances justifying such adjournment to meet the ends of justice. The Court shall record its reasons for adjourning a matter.

27. Memorandum of Evidence: -

The Court shall record only the substance of what the witness deposes and prepare a memorandum accordingly, which shall be read and explained to the witness and the memorandum of the substance recorded by the court shall be signed by the witness and the presiding officer of the Court and shall form part of the record. The evidence taken on affidavit, if any, shall also form part of the record of the court.

The judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.

If any particular mode of recording of evidence is prescribed under the special Acts referred to in Rule 5(d) they shall be followed.

28. The court shall furnish to the parties to the proceedings before it, a copy of the judgment certified to be a true copy free of cost.

29. Appeal under Section 19(1) of the Act shall be in the manner of appeals against the original decree or order in a civil proceeding, but there shall be no court fee payable for the appeal
If any court fee is prescribed under various special Acts, they shall be paid in respect of the appeal.

30. Application for Guardianship: -

All petitions for guardianship, other than applications over which the High Court has jurisdiction, shall be filed before the Family Court.

31. Contents of the Application: -

Every petition for guardianship, when it is a person other than the natural parent or natural guardian of the child, shall be accompanied by a home study report made by the Counsellor, of the person asking for such guardianship and his/her spouse, if any.

32. In case of a child placed in guardianship the court may, at any time direct a Counsellor attached to the court to supervise the placement of the child and submit a report thereon to the court in such manner as the court may deem fit.

33. A child study report of the child proposed to be taken in guardianship together with the photograph of the child should also be filed in all petitions for guardianship, as required under the Rules framed under the Guardian and Wards Act, 1890. The report shall be countersigned by the petitioner.

34. A proceeding before the Family Court shall not become invalid by reason only of non-compliance with any of the procedural requirements prescribed herein.

INTERIM APPLICATIONS

35. Interim Application: -

All interim applications to the court shall be separately numbered as Interim Application No._____'. In Petition No._____

36. Officers: -

The District Judge shall appoint the staff and other ministerial officers as may be necessary for the administration of justice and due execution of all powers and authorities exercisable by a Family Court:

Provided that the appointment of ministerial officers and ministerial staff shall be under the administrative and disciplinary control of the District Judge subject to any rules or restrictions as may be prescribed or imposed under the Act. The powers of posting and transfer of the staff shall vest with the District Judge concerned.

37. The proceedings before the court shall be heard and disposed of as quickly as possible, preferably within 3 months, after failure of attempts at reconciliation.

38. Control of High Court: -

Every Judge of the Family Court shall be under the administrative and disciplinary control of the High Court.

39. Power of High Court to transfer Judges:-

Without prejudice to the administrative and disciplinary control of the High Court, such court or a judge thereof authorized under general or special order in this behalf by such court, may where it is considered necessary or expedient to do so, transfer Judge of the Family Court.

40. Power of High Court to issue directions:-

For carrying out the purposes of the Act and for ensuring the uniformity of practice to be observed by the Family Courts and for expeditious disposal of cases, the High Court shall from time to time, supervise and inspect the courts and issue directions/circulars etc., to the Family Courts.

41. Powers to call for information etc.: -

The High Court may require Family Courts to maintain such registers and records containing such particulars as may be approved by the High Court and call for necessary information as and when required. The amount payable to the Counseilors and experts and to be spent towards refreshments shall be met out of the expenses of the account of the District Judge in whose jurisdiction the Family Court is situated.

42. Judge not to try a case in which he is interested: -

No judge shall hear or decide any case to which he is a party or in which he/she is personally interested.

43. In settlement of immovable properties, court fee or stamp duty whichever is payable shall be collected as per the Sikkim Court Fees Act or any other enactment.

S.W.LEPCHA,
REGISTRAR GENERAL